

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

Foothill Point LLC, a California
Limited Liability Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Foothill Point LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant Foothill Point LLC owned the real property located at or about 2301 Foothill Blvd, Oakland, California, in August 2021.

3. Defendant Foothill Point LLC owns the real property located at or about 2301 Foothill Blvd, Oakland, California, currently.

1 4. Defendant Foothill Point LLC owned Foothill Point Laundromat
2 located at or about 2301 Foothill Blvd, Oakland, California, in August 2021.

3 5. Defendant Foothill Point LLC owns Foothill Point Laundromat located
4 at or about 2301 Foothill Blvd, Oakland, California, currently.

5 6. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained of,
8 and alleges a joint venture and common enterprise by all such Defendants.
9 Plaintiff is informed and believes that each of the Defendants herein is
10 responsible in some capacity for the events herein alleged, or is a necessary
11 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
12 the true names, capacities, connections, and responsibilities of the Defendants
13 are ascertained.

14
15 **JURISDICTION & VENUE:**

16 7. The Court has subject matter jurisdiction over the action pursuant to 28
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 8. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California's Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 10. Plaintiff went to Foothill Point Laundromat in August 2021 with the

1 intention to avail himself of its goods or services motivated in part to
2 determine if the defendants comply with the disability access laws. Not only
3 did Plaintiff personally encounter the unlawful barriers in August 2021, but he
4 wanted to return and patronize the business again but was specifically
5 deterred due to his actual personal knowledge of the barriers gleaned from his
6 encounter with them.

7 11. Foothill Point Laundromat is a facility open to the public, a place of
8 public accommodation, and a business establishment.

9 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
10 to provide wheelchair accessible parking in conformance with the ADA
11 Standards as it relates to wheelchair users like the plaintiff.

12 13. Foothill Point Laundromat provides parking to its customers but fails to
13 provide any wheelchair accessible parking.

14 14. A couple of problems that plaintiff encountered was that there were no
15 van-accessible parking spaces. The only ADA parking space had a parking stall
16 that was 90 inches in width and an access aisle that was 48 inches in width.
17 This is not accessible for standard vehicles or vans. What is more, the parking
18 stall and access aisle marked and reserved for persons with disabilities had
19 slopes that exceeded 2.1%.

20 15. Plaintiff believes that there are other features of the parking that likely
21 fail to comply with the ADA Standards and seeks to have fully compliant
22 parking for wheelchair users.

23 16. On information and belief, the defendants currently fail to provide
24 wheelchair accessible parking.

25 17. These barriers relate to and impact the plaintiff's disability. Plaintiff
26 personally encountered these barriers.

27 18. Even though the plaintiff did not encounter the following barrier, the
28 entrance has a threshold that is about 0.75 inches in height.

1 19. As a wheelchair user, the plaintiff benefits from and is entitled to use
2 wheelchair accessible facilities. By failing to provide accessible facilities, the
3 defendants denied the plaintiff full and equal access.

4 20. The failure to provide accessible facilities created difficulty and
5 discomfort for the Plaintiff.

6 21. The defendants have failed to maintain in working and useable
7 conditions those features required to provide ready access to persons with
8 disabilities.

9 22. The barriers identified above are easily removed without much
10 difficulty or expense. They are the types of barriers identified by the
11 Department of Justice as presumably readily achievable to remove and, in fact,
12 these barriers are readily achievable to remove. Moreover, there are numerous
13 alternative accommodations that could be made to provide a greater level of
14 access if complete removal were not achievable.

15 23. Plaintiff will return to Foothill Point Laundromat to avail himself of its
16 goods or services and to determine compliance with the disability access laws
17 once it is represented to him that Foothill Point Laundromat and its facilities
18 are accessible. Plaintiff is currently deterred from doing so because of his
19 knowledge of the existing barriers and his uncertainty about the existence of
20 yet other barriers on the site. If the barriers are not removed, the plaintiff will
21 face unlawful and discriminatory barriers again.

22 24. Given the obvious and blatant nature of the barriers and violations
23 alleged herein, the plaintiff alleges, on information and belief, that there are
24 other violations and barriers on the site that relate to his disability. Plaintiff will
25 amend the complaint, to provide proper notice regarding the scope of this
26 lawsuit, once he conducts a site inspection. However, please be on notice that
27 the plaintiff seeks to have all barriers related to his disability remedied. See
28 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff

encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

25. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

26. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and

the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

27. When a business provides parking, it must provide accessible parking.

28. Here, accessible parking has not been provided in conformance with the ADA Standards.

29. When a business provides paths of travel, it must provide accessible paths of travel.

30. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

31. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

32. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

33. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

34. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 35. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 36. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
11 (c).)

12
13 **PRAYER:**

14 Wherefore, Plaintiff prays that this Court award damages and provide
15 relief as follows:

16 1. For injunctive relief, compelling Defendants to comply with the
17 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
18 plaintiff is not invoking section 55 of the California Civil Code and is not
19 seeking injunctive relief under the Disabled Persons Act at all.


20 2. For equitable nominal damages for violation of the ADA. See
21 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
22 and any other equitable relief the Court sees fit to grant.

23 3. Damages under the Unruh Civil Rights Act, which provides for actual
24 damages and a statutory minimum of \$4,000 for each offense.

25 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
26 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: August 23, 2021

CENTER FOR DISABILITY ACCESS

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3 By: 
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5 Amanda Seabock, Esq.
6 Attorney for plaintiff
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